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UPDATES FROM INTER-GOVERNMENTAL ORGANIZATIONS

INTERGOVERNMENTAL ORGANIZATIONS

THE EUROPEAN UNION EVADES ITS OBLIGATIONS TO REFUGEES FLEEING LIBYA

Over a million people have fled Libya since the February 2011 uprising to oust leader Colonel Muammar Qadhafi turned violent. Many of them are foreigners who had taken refuge in Libya from conflict in their own countries. Some have returned to their countries of origin, but others remain in a precarious situation as thirdcountry refugees – twice displaced from their home countries. Humanitarian agencies say these people, mainly from sub-Saharan Africa, cannot return to their countries of origin for fear of persecution or violence and must be resettled immediately. In Libya, anti-Qadhafi forces often accused them of being pro-regime foreign mercenaries, rendering their return to Libya improbable. Roughly 5,000 non-Libyan refugees and asylum-seekers remain in makeshift camps in Tunisia and Egypt. The UN High Commissioner for Refugees (UNHCR), responsible for coordinating international action to protect refugees, faces major difficulties in fulfilling its mandate due, in large part, to a lack of cooperation by the European Union (EU). Seven of the twenty-seven EU states, all signatories to the UN Convention on the Status of Refugees (Convention), pledged 394 spots for the UNHCR's overall Global Resettlement Solidarity Initiative, which has an initial target of resettling 8,000 refugees. No EU member state has offered additional resettlement places for the 2,397 third country refugees and asylum-seekers fleeing Libya that the UNHCR has designated in need of immediate resettlement. In comparison, Norway, a non-EU member, offered 250 spots for refugees from Libya. Similarly, the United States pledged an open number of places. Under the Convention, which enshrines the principle of non-refoulement, refugees and asylum-seekers cannot be forcibly returned to their countries of origin. Therefore, the UNHCR and potential host countries are responsible for finding adequate solutions for their resettlement.

The EU acknowledged its international obligations under the Convention by adopting the Policy Plan on Asylum and the European Pact on Immigration and Asylum to increase its cooperation with the UNHCR in the resettlement of third country refugees within Europe. These instruments aim to “meet the protection needs of refugees in third countries and to show solidarity with third countries of first asylum.” It also created the European Refugee Fund to increase resettlement capacity across Europe. However, the choice to resettle refugees remains a sovereign decision. Resettlement within Europe lags severely behind other developed signatories to the Convention as well as UNHCR's needs. In 2010, the U.S. and Canada resettled 54,077 and 6,732 persons, respectively. In total, the top five EU countries resettled 4,019 persons.

Most countries face general financial and social difficulties of integrating refugees into unfamiliar societies. The UNHCR recognizes that Europe faces the added challenge of managing increasingly diverse countries with greater migration and mobility due to the EU's borderless nature, placing “a strain on existing social structures.” However, nations with far fewer resources, such as Tunisia and Egypt, often bear the burden of providing asylum when developed states shirk their responsibilities. In addition, the Convention specifically states that its provisions shall apply to all refugees regardless of race, religion or country of origin, rendering social cohesion an invalid excuse for refusing to resettle refugees and asylum-seekers.

Europe's obligation to resettle refugees and asylum-seekers displaced by the Libyan conflict is also a moral one. The EU's desire to stem illegal migration from Libya caused it to seek cooperation with Libya to combat illegal migration, which allowed Libya, a non-signatory to the Convention, to use a heavy hand against refugees and asylum-seekers attempting to flee to the EU. The EU even contributed financially to Libya's “management of migration flows.” When the uprising against the Qadhafi regime escalated, EU members played a significant role in draft-

ing Security Council Resolution 1973. The resolution authorized a no fly zone and bombing campaign in Libya to which eleven EU member states contributed. The fighting across the country caused thousands of people to flee to transit camps in Egypt and Tunisia.

Although the Convention does not force signatories to accept displaced persons, the refusal of developed countries to do so hinders the work of UNHCR and the spirit of the Convention. The EU can meet its commitment to increase both its cooperation with UNHCR and to provide “greater ... support to the international protection of refugees” by increasing its resettlement of refugees and asylum-seekers fleeing Libya. Furthermore, allowing refugees a legal means to enter the European Union through a formal and efficient registration process could significantly decrease the flow of illegal migrants and asylum-seekers, which has plagued some members of the EU since the conflict in Libya began.

UN ORGANS FLOUT PANEL'S RECOMMENDATIONS ON SRI LANKA

The UN Human Rights Council (HRC), mandated with addressing “gross and systematic” violations of human rights, concluded its eighteenth session in September, once again failing to address the allegations of war crimes and crimes against humanity committed during the last stages of the civil war in Sri Lanka. For nearly 27 years the Sri Lankan government battled the Liberation Tigers of Tamil Eelam (LTTE), a separatist paramilitary group. Upon the opening of this session, UN Secretary-General Ban ki-Moon forwarded a report to the HRC by his Panel of Experts on Accountability in Sri Lanka (Panel). The Report, first released in April, contained credible allegations that both belligerents engaged in conduct that, if verified, could amount to serious breaches of the laws of war governed by the Geneva Conventions. In addition, the Panel found that the UN Office for the Coordination of Humanitarian Affairs (OCHA) may have contravened its mandate to advocate for the protection of civilians and called on the

UN to establish an accountability mechanism. As many of the Report's recommendations have gone unheeded, victims have attempted to turn to other means for justice.

Article 3 of the Fourth Geneva Convention and customary international law oblige all belligerents to protect non-combatants in areas of armed conflict. The Report, mandated to address the final stage of the conflict from September 2008 through May 2009, found that up to 40,000 civilians may have been killed by both widespread government shelling of civilian-populated areas and the LTTE's executions of those attempting to flee. In the Report, which the Sri Lankan government immediately rejected, Panel members wrote that under international humanitarian law, the government has a legal duty to conduct genuine investigations and to prosecute those most responsible.

Because Sri Lanka refuses to follow through on the Report's recommendations and is not a member of the International Criminal Court, the Panel called on the Secretary-General to establish an international mechanism to verify the alleged crimes. The Secretary-General said that other UN organs, namely the HRC, have the authority to create such an investigative mechanism. In May 2009, the HRC adopted Resolution S-11/1 calling on Sri Lanka to respect human rights and welcoming its

commitment to do so, without directly addressing the alleged crimes. The Panel said this decision may have been based on incomplete information and invited the HRC to reconsider it. Despite this recommendation and its capacity to establish commissions to investigate human rights abuses, the HRC failed to address Sri Lanka altogether in its eighteenth session that concluded on September 30.

Six months after the release of the Report, the Secretary-General complied with the Panel's recommendation to conduct a review of the UN's actions during the war in Sri Lanka. The Panel found that the UN, namely OCHA, the UN's humanitarian coordination organ, abrogated its responsibility to advocate for victims. During the war, UN staff compiled a document estimating that 7,721 people had been killed. The Panel found that public use of casualty figures by the UN would have strengthened the call for protection of civilians as the events were unfolding, but that the UN, due to pressure from the Sri Lankan Government and fear of losing humanitarian access, failed to use these figures publicly. As the UN organs await the findings of the review, war victims lack a means for accountability for the crimes committed within Sri Lanka.

With the doors to justice through international mechanisms all but entirely closed, families of the victims are turning to other

outlets. In September, American University Washington College of Law's UNROW Human Rights Impact Litigation Clinic filed a lawsuit against retired Sri Lankan General Shavendra Silva, currently the country's deputy ambassador to the UN. General Silva is charged in the Southern District of New York under the Alien Tort Claims Act and the Torture Victim Protection Act for extrajudicial killings committed under his command of the 58th division during the conflict period in early 2009. General Silva must respond to the allegations, however, he is likely to claim diplomatic immunity under the Convention on the Privileges and Immunities of the United Nations (Convention). Thus far, the Secretary-General has not exercised his right and duty, according to Section 20 of Article V of the Convention, to waive the immunity where, "in his opinion, the immunity would impede the course of justice." If General Silva is found to enjoy diplomatic immunity from the court's civil proceedings, yet another avenue for justice for the victims of the war in Sri Lanka will have closed.

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